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Human Genome Sciences, Inc.  
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In re Application of FRASER et al  
U.S. Application No.: 09/830,228  
Int. Application No.: PCT/US98/12764  
Int. Filing Date: 18 June 1998  
Priority Date: 20 June 1997  
Attorney Docket No.: PB370US  
For: *BORRELIA BURGDOFFERI*  
POLYNUCLOTIDES AND SEQUENCES

DECISION

This is in response to applicants' "Request to Correct Inventorship Under 37 C.F.R. § 1.48(a)" filed 13 September 2002, which is being treated as a petition under 37 CFR 1.497(d).

### **BACKGROUND**

On 18 June 1998, applicants filed international application PCT/US98/12764, which claimed priority of an earlier United States application filed 20 June 1997. The twenty-month period for paying the basic national fee in the United States expired at midnight on 22 February 1999 (20 February 1999 was a Saturday).

International application PCT/US98/12764 became abandoned as to the United States at midnight on 22 February 1999 for failure to pay the basic national fee.

On 24 April 2001, applicants filed a petition under 37 CFR 1.137(b) with the United States Designated/Elected Office (DO/EO/US).

On 01 August 2001, this Office mailed a decision granting the 24 April 2001 petition.

On 13 March 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a properly executed declaration must be submitted.

On 13 September 2002, applicant filed the present petition under 37 CFR 1.497(d) along with executed declarations.

### DISCUSSION

37 CFR 1.497(d) (effective 07 November 2000) states,

If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

With regard to item (1) above, the requisite statement has been provided.

With regard to item (2) above, the requisite fee has been provided.

With regard to item (3) above, in situations where an assignee consents to a correction of inventorship, ownership of the application must be established. See MPEP 324. Under 37 CFR 3.73(b), ownership is established by documentary evidence of a chain of title from the original owner to the assignee. In the present case, applicants have provided documentary evidence in the form of assignment agreements in compliance with 37 CFR 3.73(b)(1)(i). Furthermore, the submission establishing ownership includes statements that the persons signing are authorized to act on behalf of the respective assignees. Therefore, applicants have sufficiently demonstrated written consent of the assignees.

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.497(d) is GRANTED.

The application has an International Filing Date of 18 June 1998 and a date under 35 U.S.C. 371(c) of 13 September 2002.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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